

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: DAVOL, INC./C.R. BARD, INC.,
POLYPROPYLENE HERNIA MESH
PRODUCTS LIABILITY LITIGATION**

Case No.: 2:18-md-2846

**JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

**This document relates to:
ANTONIO MILANESI, et al.**

Case No.: 2:18-cv-01320

JOINT MOTION TO VACATE JUDGMENT AND DISMISS CASE

Plaintiffs Antonio Milanesi and Alicia Morz de Milanesi and Defendants C. R. Bard, Inc. and Davol Inc. (collectively, the “Parties”) move the Court pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Civil Procedure 41(a)(2) for (i) an order vacating the judgment rendered in this case on April 15, 2022 (ECF No. 381), (ii) an order dismissing this case with prejudice, and, if necessary, (iii) an oral hearing to address any questions the Court may have regarding this motion. The Parties have resolved the case and file this motion jointly consistent with the Parties’ intent that the jury’s verdict not have any potential preclusive effect in on-going and future litigation. The Parties each filed post-trial motions consistent with their respective concerns about aspects of the trial and jury verdict. After the Court issued an order denying all post-trial motions, Plaintiffs filed a notice of appeal and Defendants cross-appealed. The appeals have been dismissed in connection with the resolution of the case.

Federal Rule of Civil Procedure 60(b)(5) permits a district court, “[o]n motion and just terms,” to “relieve a party or its legal representative from a final judgment, order, or proceeding” for specified reasons, including that “(5) the judgment has been satisfied, released, or discharged . . . or applying it prospectively is no longer equitable; or [¶] (6) [for] any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)-(6). District courts have “broad discretion” to do so under the

Rules. *Singh Mgmt. Co., LLC v. Singh Dev. Co.*, 774 F. App'x 921, 925 (6th Cir. 2019) (“The Federal Rules grant district courts broad discretion to ‘alter or amend a judgment’ or to grant ‘relief from a judgment or order.’”) (citing Fed. R. Civ. P. 59(e), 60(a) & (b)). Here, party agreement and facilitation of settlement support granting vacatur.

I. THE PARTIES AGREE THAT THE JUDGMENT SHOULD BE VACATED.

Vacatur here is consistent with the Court’s mandate that “justice be done in light of all the facts.” *Blue Diamond Coal Co. v. Trustees of UMWA Combined Benefit Fund*, 249 F.3d 519, 529 (6th Cir. 2001). This vacatur request comes before the Court on joint motion of the Parties, who each evaluated the benefit of vacatur in connection with the resolution of this case without waiting for the lengthy and costly appeals to play out. Such efficiency advances justice for both Parties to this matter and for parties in other matters who rely upon limited judicial resources in their own searches for justice. Vacating this verdict will also not hinder the pursuit of justice in the remaining MDL cases. This is not the first bellwether case tried, nor is it slated to be the last.¹ The remaining cases may still proceed.

II. GRANTING VACATUR WILL NOT DETER RESOLUTION OF OTHER CASES.

This bellwether case was one of several identified for workup and trial. Among the cited advantages of modern bellwether trials is “precipitat[ing] and informing[ing] settlement negotiations by indicating future trends, that is, by providing guidance on how similar claims may fare before subsequent juries.” See Eldon E. Fallon, Jeremy T. Grabill, & Robert Pitard Wynne, *The Problem of Multidistrict Litigation: Bellwether Trials in Multidistrict Litigation*, 82 Tul. L. Rev. 2323, 2338 (2008), Ex. A. If anything, trying this case prior to settlement and vacating the

¹ As far as the Parties are aware, there are no third parties whose interests would be affected by an order vacating the judgment. While there are other hernia mesh cases currently pending in this MDL and in state courts, this is not the only case involving a Bard hernia mesh device to produce a jury verdict or judgment on the merits. Thus, having this judgment remain in place is not itself determinative.

judgment promotes discussion of resolution of other cases by providing additional information on trial prospects that would not have been available otherwise. Instead, the Parties have generated another bellwether data point to further those discussions. Rather than inhibiting resolution of other cases, the Parties believe that vacatur would promote it.

This joint motion reflects the reasoned view of both the PSC and Defendants' Lead Counsel that vacating the judgment in this case will further the chance of resolution beyond this case and the orderly administration of this MDL. That the motion is filed jointly negates any concern that resolution of this case and an attempt to vacate the judgment reflect some sort of gamesmanship by one of the Parties. *See, e.g., Asher v. Unarco Material Handling, Inc.*, No. 06-548-ART, 2012 U.S. Dist. LEXIS 127303, *12-14 (E.D. Ky. Sept. 7, 2012) (internal citations omitted).

III. CONCLUSION

For these reasons, equity justifies relief. The Parties respectfully jointly request an order vacating the judgment pursuant to Rule 60(b), that the case then be dismissed pursuant to Rule 41(a)(2), and a brief oral hearing to address any questions the Court may have regarding this motion.

Dated: January 5, 2023

/s/ David J. Butler

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of this electronic filing to all counsel of record.

/s/ Eric L. Alexander

Eric L. Alexander